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11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**

13 UNICOLORS, INC., a California
14 Corporation,

15 Plaintiff,

16 vs.

17 POTPOURRI GROUP, INC., a
18 Massachusetts Corporation, individually,
19 and doing business as "THE PYRAMID
20 COLLECTION"; and DOES 1 through
21 10,

22 Defendants.

Case No.:

PLAINTIFF'S COMPLAINT FOR:

1. COPYRIGHT INFRINGEMENT;
2. VICARIOUS AND/OR CONTRIBUTORY COPYRIGHT INFRINGEMENT

Jury Trial Demanded

23
24 Plaintiff, UNICOLORS, INC. (hereinafter "UNICOLORS"), by and through its
25 undersigned attorneys, hereby prays to this honorable Court for relief based on the
26 following:
27

1 by such fictitious names and will seek leave to amend this complaint to show their
2 true names and capacities when same have been ascertained.

3 7. Defendants DOES 6 through 10, inclusive, are other parties not yet
4 identified who have infringed Plaintiff's copyrights, have contributed to the
5 infringement of Plaintiff's copyrights, or have engaged in one or more of the
6 wrongful practices alleged herein. The true names, whether corporate, individual or
7 otherwise, of Defendants DOES 6 through 10, inclusive, are presently unknown to
8 Plaintiff, which therefore sues said Defendants by such fictitious names, and will
9 seek leave to amend this Complaint to show their true names and capacities when
10 same have been ascertained.

11 8. Plaintiff is informed and believes and thereon alleges that at all times
12 relevant hereto each of the Defendants was the agent, affiliate, officer, director,
13 manager, principal, alter-ego, and/or employee of the remaining Defendants and was
14 at all times acting within the scope of such agency, affiliation, alter-ego relationship
15 and/or employment; and actively participated in or subsequently ratified and
16 adopted, or both, each and all of the acts or conduct alleged, with full knowledge of
17 all the facts and circumstances, including, but not limited to, full knowledge of each
18 and every violation of Plaintiff's rights and the damages to Plaintiff proximately
19 caused thereby.

20 **CLAIMS RELATED TO DESIGN ET1011**

21 9. Prior to the conduct complained of herein, Plaintiff composed an original
22 two-dimensional artwork for purposes of textile printing. It allocated this design the
23 name ET1011 (hereinafter "Subject Design"). This artwork was a creation of
24 Plaintiff and Plaintiff's design team, and is, and at all relevant times was, owned
25 exclusively by Plaintiff.

26 10. Plaintiff applied for and received a United States Copyright Registration
27 for the Subject Design.

1 11. Prior to the acts complained of herein, Plaintiff sampled and sold fabric
2 bearing Subject Design to numerous parties in the fashion and apparel industries.

3 12. Following this distribution of product bearing the Subject Design,
4 Plaintiff's investigation revealed that certain entities within the fashion and apparel
5 industries had misappropriated the Subject Design, and were selling fabric and
6 garments bearing illegal reproductions and derivations of the Subject Design.

7 13. Plaintiff is informed and believes and thereon alleges that, without
8 Plaintiff's authorization, POTPOURRI and certain DOE Defendants created, sold,
9 manufactured, caused to be manufactured, imported and/or distributed fabric and/or
10 garments comprised of fabric featuring designs which are identical to or substantially
11 similar to the Subject Design (hereinafter "Infringing Garment"). Said garments
12 include but are not limited to the garment shown below with Item Number P97572,
13 and bearing the label "THE PYRAMID COLLECTION," indicating said garments
14 were manufactured by, caused to be manufactured by, or supplied by POTPOURRI.

15 14. Plaintiff served a cease and desist demand on POTPOURRI on April 7,
16 2015, but said Defendant failed to adequately respond.

17 15. A comparison of the Subject Design and the Infringing Garment is set forth
18 below; it is apparent that the elements, composition, colors, arrangement, layout, and
19 appearance of the designs are substantially similar.

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Subject Design



Infringing Garment

Detail



Garment



FIRST CLAIM FOR RELIEF

(For Copyright Infringement – Against All Defendants, and Each)

16. Plaintiff repeats, realleges, and incorporates herein by reference as though fully set forth, the allegations contained in the preceding paragraphs of this Complaint.

17. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them, had access to the Subject Design, including, without limitation, through (a) access to Plaintiff's showroom and/or design library; (b) access to illegally distributed copies of the Subject Designs by third-party vendors and/or DOE Defendants, including without limitation international and/or overseas converters and printing mills; (c) access to Plaintiff's strike-offs and samples, and (d) garments manufactured and sold to the public bearing fabric lawfully printed with the Subject Design by Plaintiff for its customers.

18. Plaintiff is informed and believes and thereon alleges that one or more of the Defendants manufactures garments and/or is a garment vendor. Plaintiff is further informed and believes and thereon alleges that said Defendant(s) has an ongoing business relationship with Defendant retailer, and each of them, and supplied garments to said retailer, which garments infringed the Subject Design in that said garments were composed of fabric which featured unauthorized print design(s) that were identical or substantially similar to the Subject Design, or were an illegal derivation or modification thereof.

19. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them, infringed Plaintiff's copyrights by creating, making, and/or developing directly infringing and/or derivative works from the Subject Design and by producing, distributing and/or selling garments which infringe the Subject Design through a nationwide network of retail stores, catalogues, and through on-line websites.

1 20. Due to Defendants' acts of infringement, Plaintiff has suffered substantial
2 damages to its business in an amount to be established at trial.

3 21. Due to Defendants' acts of infringement, Plaintiff has suffered general and
4 special damages in an amount to be established at trial.

5 22. Due to Defendants' acts of copyright infringement as alleged herein,
6 Defendants, and each of them, have obtained direct and indirect profits they would
7 not otherwise have realized but for their infringement of the Subject Design. As
8 such, Plaintiff is entitled to disgorgement of Defendant's profits directly and
9 indirectly attributable to Defendant's infringement of the Subject Design in an
10 amount to be established at trial.

11 23. Plaintiff is informed and believes and thereon alleges that Defendants, and
12 each of them, have committed acts of copyright infringement, as alleged above,
13 which were willful, intentional and malicious, which further subjects Defendants,
14 and each of them, to liability for statutory damages under Section 504(c)(2) of the
15 Copyright Act in the sum of up to one hundred fifty thousand dollars (\$150,000.00)
16 per infringement. Within the time permitted by law, Plaintiff will make its election
17 between actual damages and statutory damages.

18 **SECOND CLAIM FOR RELIEF**

19 (For Vicarious and/or Contributory Copyright Infringement - Against All
20 Defendants)

21 24. Plaintiff repeats, realleges, and incorporates herein by reference as though
22 fully set forth, the allegations contained in the preceding paragraphs of this
23 Complaint.

24 25. Plaintiff is informed and believes and thereon alleges that Defendants
25 knowingly induced, participated in, aided and abetted in and profited from the illegal
26 reproduction and/or subsequent sales of garments featuring the Subject Design as
27 alleged herein.

26. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them, are vicariously liable for the infringement alleged herein because they had the right and ability to supervise the infringing conduct and because they had a direct financial interest in the infringing conduct.

27. By reason of the Defendants', and each of their acts of contributory and vicarious infringement as alleged above, Plaintiff has suffered and will continue to suffer substantial damages to its business in an amount to be established at trial, as well as additional general and special damages in an amount to be established at trial.

28. Due to Defendants', and each of their acts of copyright infringement as alleged herein, Defendants, and each of them, have obtained direct and indirect profits they would not otherwise have realized but for their infringement of the Subject Design. As such, Plaintiff is entitled to disgorgement of Defendants' profits directly and indirectly attributable to Defendants' infringement of the Subject Design, in an amount to be established at trial.

29. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them, have committed acts of copyright infringement, as alleged above, which were willful, intentional and malicious, which further subjects Defendants, and each of them, to liability for statutory damages under Section 504(c)(2) of the Copyright Act in the sum of up to one hundred fifty thousand dollars (\$150,000.00) per infringement. Within the time permitted by law, Plaintiff will make its election between actual damages and statutory damages.

PRAYER FOR RELIEF

Wherefore, Plaintiff prays for judgment as follows:

Against All Defendants

With Respect to Each Claim for Relief

- a. That Defendants, their agents and employees be enjoined from infringing Plaintiff's copyrights in any manner, specifically those for the Subject Design;
- b. That Plaintiff be awarded all profits of Defendants plus all losses of Plaintiff, plus any other monetary advantage gained by the Defendants through their infringement, the exact sum to be proven at the time of trial, or, if elected before final judgment, statutory damages as available under the Copyright Act, 17 U.S.C. § 101 et seq.;
- c. That a trust be imposed over the revenues derived by Defendants, and each of them, through the sales or distribution of the product at issue;
- d. That Plaintiff be awarded its attorneys' fees as available under the Copyright Act U.S.C. § 101 et seq.;
- e. That Defendants, and each of them, account to Plaintiff for their profits and any damages sustained by Plaintiff arising from the foregoing acts of infringement;
- f. That Plaintiff be awarded pre-judgment interest as allowed by law;
- g. That Plaintiff be awarded the costs of this action; and
- h. That Plaintiff be awarded such further legal and equitable relief as the Court deems proper.

Plaintiff demands a jury trial on all issues so triable pursuant to Fed. R. Civ. P. 38 and the 7th Amendment to the United States Constitution.

Respectfully submitted,

Dated: October 15, 2015

By: /s/ Scott Alan Burroughs
Scott Alan Burroughs, Esq.
DONIGER / BURROUGHS
Attorneys for Plaintiff
UNICOLORS, INC.